

Hence, the Commission was directed to explain how, in the cost-benefit analysis that the court saw fit to read into the Commission's obligations in addressing structural relief procedural issues, access discrimination would be prevented in the absence of "fundamental unbundling," or at least how the cost benefit analysis would or would not be altered by the perceived Commission change of position.⁴² As noted previously, the benefits of integrated operation are clear, and do not change per se depending on the degree of unbundling - although, in an ONA context, market driven unbundling can itself promote competition.

While U S WEST is of the firm belief that the court was wrong and that no "fundamental unbundling" requirement was ever part of the relief from the Commission's separate subsidiary rules, the court's concern is easily met. There seems to be no question but that unbundling along market lines is generally salutary, but that artificial unbundling along lines established by a regulator (or, perhaps, an ill-motivated competitor seeking to disrupt an RBOC's service for anti-competitive ends) can be expensive and counterproductive.⁴³ Rather, unbundling based on real market demands is far superior to regulatory unbundling.⁴⁴ The current ONA rules accomplish precisely the market driven unbundling which represents the proper approach to the issue. Namely, enhanced service providers request new ONA services based on their individual needs and desires. U S WEST processes these re-

⁴² Id.

⁴³ See Attachment 3, RRC Study at 19.

⁴⁴ Id.

quests based on market demand, economic feasibility and technological feasibility. If U S WEST wrongfully denies a new unbundled ONA service to an ESP, the ESP may seek the aid of the Commission.⁴⁵ U S WEST reports on its disposition of all requests for new ONA services every year. To date, U S WEST has received 73 requests for new ONA services from outside ESPs, and 33 from its internal enhanced service operations (U S WEST requires that its internal operations follow the same procedure in seeking new ONA services as is followed by competitors). Of these, 32 of the requests from outside vendors have been fulfilled. Three of the requests from U S WEST's internal enhanced service operations have been filled, but U S WEST cannot use these now tariffed services because ONA plan amendments were not granted and CEI plan amendments are pending.

Unlike "fundamental unbundling" (which we read to connote unbundling based upon regulatory directives, rather than market realities, the ONA requirements have been carefully tailored by the Commission to ensure that the interconnection needs of competitive enhanced service providers are met in a reasonable and nondiscriminatory fashion. As such, the unbundling required in the current ONA rules is more effective in meeting enhanced service provider needs and concerns than would be a more general and undefined "fundamental unbundling." By putting the spotlight on the interconnection needs and desires of enhanced service

⁴⁵ An elaboration of these rules can be found in In the Matters of: Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry); and Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Thereof, Communications Protocols under Section 64.702 of the Commission's Rules and Regulations, Report and Order, 104 FCC 2d 958, 1065-66 ¶¶ 217-218 (1986).

providers, the existing rules provide for a meaningful unbundling structure which precisely addresses the interconnection issues under study in this proceeding.

The simple fact is that current ONA rules, by focusing on ESP requirements, provide a fair and meaningful unbundling device based on market demand which are better designed to deal with discriminatory access than would be a vague and generic "fundamental unbundling" requirement. To date no complaints have been filed that U S WEST has in any way deviated from its responsibility to attempt to comply with these service requests. In other words, pursuant to the existing ONA rules, U S WEST is proceeding with network unbundling responsive to the needs and demands of ESPs in precisely the manner anticipated by the Ninth Circuit. No more is necessary.

VI. CONCLUSION


The foregoing discussion and, more importantly, the attached exhibits, demonstrate dramatically that the focus and thrust of the Open Network Architecture rules as conceived and adopted by the Commission were correct. The Commission had predicted and hoped that RBOC integrated enhanced service operations, coupled with open network architecture and nonstructural safeguards, would enhance competition, improve consumer choice, and benefit the public. This prediction has been proven correct. Open Network Architecture plus integrated RBOC enhanced service operations have been an unqualified success. It would be unwise and irra

tional to seek to turn back the clock and return to the days of Computer II structural separation.

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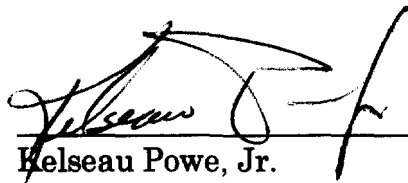
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April 7, 1995

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 10th day of April, 1995, I have caused a copy of the foregoing **ERRATUM TO COMMENTS OF U S WEST, INC.**, to be served via hand-delivery upon the persons listed on the attached service list.


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